

STATE OF MICHIGAN
COURT OF APPEALS

GARY RONCELLI and RONCELLI, INC.,

Plaintiff-Appellants,

v

O'REILLY, RANCILIO, NITZ, ANDREWS,
TURNBULL & SCOTT, P.C. and CHARLES
TURNBULL,

Defendants-Appellees.

UNPUBLISHED

May 18, 2006

No. 258951

Macomb Circuit Court

LC No. 2002-004522-NM

Before: Neff, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiffs brought this lawsuit alleging claims of legal malpractice, breach of fiduciary duty, constructive fraud, and negligent misrepresentation, arising from defendants' legal representation of plaintiffs in 2000 and 2001. The trial court granted defendants' motion for summary disposition, concluding that plaintiffs failed to show a genuine issue of material fact with respect to the elements of proximate cause and damages.

As this Court explained in *O'Donnell v Garasic*, 259 Mich App 569, 572-573; 676 NW2d 213 (2003):

A trial court's grant or denial of summary disposition under MCR 2.116(C)(10) is reviewed de novo on appeal. A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. Affidavits, pleadings, depositions, admissions, and documentary evidence are considered in reviewing a motion for summary disposition pursuant to MCR 2.116(C)(10), and the evidence is viewed 'in the light most favorable to the party opposing the motion. Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. [Citations omitted.]

To prevail on its various tort claims, plaintiff was required to establish the element of proximate cause. *Veltman v Detroit Edison Co*, 261 Mich App 685, 694; 683 NW2d 707 (2004); *Alar v Mercy Mem Hosp*, 208 Mich App 518, 530; 529 NW2d 318 (1995). Proximate cause consists of two separate elements: (1) cause in fact, and (2) legal cause. *Id* at 530. To establish cause in fact, a plaintiff must present substantial evidence from which a jury may conclude that, more likely than not, the plaintiff's injuries would not have occurred but for the defendant's conduct. *Weymers v Khera*, 454 Mich 639, 647-648; 563 NW2d 647 (1997). "To establish legal cause, the plaintiff must show that it was foreseeable that the defendant's conduct 'may create a risk of harm to the victim, and . . . [that] the result of that conduct and intervening causes were foreseeable.'" *Id.* at 648 (citations omitted). When a number of factors contribute to an injury, one actor's negligence will be considered a proximate cause of the harm if it was a substantial factor in producing the injury. *Allen v Owens-Corning Fiberglas Corp*, 225 Mich App 397, 402; 571 NW2d 530 (1997).

In this case, plaintiffs seek damages stemming from negative publicity surrounding the Freedom Hill project, which plaintiffs maintain damaged the reputation of Roncelli, Inc., resulting in a loss of business revenue for the company. Plaintiffs submitted evidence that defendant Turnbull was retained to conduct a due diligence study to enable plaintiffs to determine whether to invest in the Freedom Hill venture, but the evidence did not show that Turnbull was aware before plaintiffs invested that the city would later take adverse action with respect to the venture. Additionally, plaintiffs failed to present evidence supporting or factually explaining how defendants' alleged wrongful conduct contributed to the alleged damages arising from the city's actions against plaintiffs. Under the circumstances, the trial court properly concluded that there was no genuine issue of material fact regarding proximate cause and properly dismissed the case.

In light of our decision, it is unnecessary to consider the question of damages.

Affirmed.

/s/ Janet T. Neff
/s/ Michael J. Talbot
/s/ Brian K. Zahra